

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

WALTER MITCHELL STEWART,
JR.,

Plaintiff,

vs.

RICHARD CEBULL,

Defendant.

CV 14-121-BLG-SPW

OPINION AND ORDER

FILED
NOV 20 2014
Clerk, U.S. District Court
District Of Montana
Billings

Plaintiff Walter Stewart filed a complaint against former United States District Judge Richard Cebull. (Doc. 1). In his Amended Complaint, Stewart alleged that Judge Cebull violated his rights and did not have jurisdiction to try him. (Doc. 4 at 3-4). Stewart is proceeding pro se and in forma pauperis. Magistrate Judge Ostby recommends dismissing Stewart's Complaint and Amended Complaint with prejudice. (Doc. 6).

Stewart timely filed his objections to Magistrate Judge Ostby's Findings and Recommendations, (Doc. 10), and is therefore entitled to de novo review of the specified findings and recommendations to which he objects. 28 U.S.C. § 636(b)(1).

Stewart's objections essentially reiterate the basic allegations made in his Complaint and Amended Complaint: that is, that Judge Cebull was unprofessional

and made racial statements to Stewart and violated his Constitutional rights because Judge Cebull allegedly did not have jurisdiction to try Stewart. (Doc. 4 at 3-4; Doc. 10 at 1). As explained in Magistrate Judge Ostby's Findings and Recommendations, however, Stewart's claims are precluded by judicial immunity and otherwise barred by case law. (Doc. 6 at 5-8).

Magistrate Judge Ostby correctly pointed out that Judge Cebull's actions about which Stewart complains were judicial in nature and within his official duties, thus immunizing him from Stewart's suit. (*Id.*) (citing *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985)). Additionally, Magistrate Judge Ostby is correct that the United States Supreme Court barred civil claims like Stewart's when the underlying criminal conviction has not been overturned. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Neither Stewart's conviction nor his sentence has been reversed on direct appeal, or otherwise been declared invalid, thus his civil claim regarding the same is barred. *Id.* at 487. Stewart's allegations lack merit under the law and will be dismissed.

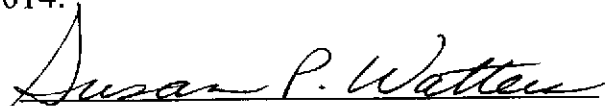
After a de novo review of Magistrate Judge Ostby's findings and recommendations, IT IS ORDERED that the Findings and Recommendations (Doc. 6) are adopted in full.

IT IS FURTHER ORDERED that Stewart's Complaint and Amended Complaint are DISMISSED WITH PREJUDICE.

The Clerk of Court is directed to close this case and enter judgment in favor of the Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Clerk of Court is further directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Stewart's Complaint is frivolous.

The Clerk of Court is also directed to have the docket reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 20th day of November 2014.


SUSAN P. WATTERS
United States District Judge